



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2004

Ms. Shelly Doty
Records Manager
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2004-4611

Dear Ms. Doty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202975.

The City of Cleburne (the "city") received a request for information relating to a named individual during a two-year time interval. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We initially note that the submitted information includes arrest warrants and affidavits for arrest warrants. The 78th Legislature amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26 (emphasis added). Thus, arrest warrants and affidavits for arrest warrants that have been presented to a magistrate are made public by and must be released under article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in the Public Information Act (the "Act"), chapter 552 of the Government

Code, do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the city must release the arrest warrants and the affidavits for arrest warrants that we have marked under article 15.26 of the Code of Criminal Procedure.

We also note that the submitted information includes complaints. Article 15.04 of the Code of Criminal Procedure provides that “[t]he *affidavit* made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” Crim. Proc. Code art. 15.04 (emphasis added). Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref’d); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref’d) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). Although the submitted complaints appear to have been made before a magistrate, we are unable to determine whether they were presented to the magistrate in support of the issuance of an arrest warrant. As we are unable to make this determination, we must rule in the alternative. To the extent that the complaints that we have marked were, in fact, “presented to the magistrate in support of the issuance of an arrest warrant,” they are made public by article 15.26 of the Code of Criminal Procedure and must be released. To the extent that the marked complaints were not so presented, they are not made public by article 15.26 and must be disposed of along with the rest of the requested information.

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information with regard to a particular individual, the compiled information takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

In this instance, the request is for “[p]olice [r]eports on [a named individual], 2003 & 2004.” This request for unspecified information implicates the named individual’s right to privacy. Therefore, to the extent that the city maintains any information that is not made public by article 15.26 of the Code of Criminal Procedure and that relates to the named individual as a criminal suspect, arrestee, or defendant, any such information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with privacy under *Reporters Committee*.

In summary: (1) the marked arrest warrants and affidavits for arrest warrants must be released under article 15.26 of the Code of Criminal Procedure; (2) to the extent that the marked complaints were presented to the magistrate in support of the issuance of an arrest warrant, they also must be released under article 15.26; and (3) any information maintained by the city that is not made public by article 15.26 of the Code of Criminal Procedure and that relates to the named individual as a criminal suspect, arrestee, or defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with privacy under *Reporters Committee*. As we are able to make these determinations, we need not address your arguments under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

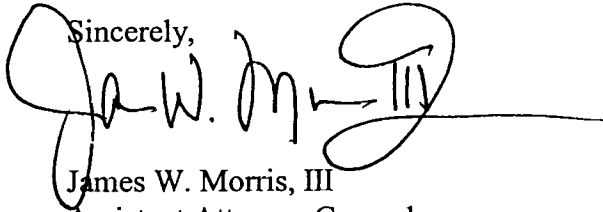
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 202975

Enc: Submitted documents

c: Ms. Lois Cochran
227 West Willingham Street
Cleburne, Texas 76033
(w/o enclosures)